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HOUSE BILL 527

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Joe Mohorovic

AN ACT

RELATING TO CIVIL ACTIONS; ENACTING THE LITIGATION
ACCOUNTABILITY ACT; PROVIDING FOR THE AWARD OF COURT COSTS AND
ATTORNEY FEES IN CERTAIN INSTANCES; REQUIRING THAT THE ACTUAL
NAMES OF THE PARTY BE USED IN CERTAIN CIVIL ACTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Litigation Accountability Act".

Section 2. DEFINITION.--As used in the Litigation
Accountability Act, "without substantial justification" means
a claim or a defense in a civil action that is frivolous,
groundless in fact or in law or vexatious.

Section 3. AWARD OF COURT COSTS AND ATTORNEY FEES.--

A. Except as provided in Subsections C and D of
this section, upon its own motion or upon the motion of any

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1 party, a court in a civil action shall assess court costs and
2 attorney fees if, after considering the factors specified in
3 Section 4 of the Litigation Accountability Act, it finds that
4 a claim or defense, or a part thereof, raised in the action:

5 (1) is without substantial justification;
6 (2) is raised for the purpose of delay or
7 harassment; or

8 (3) otherwise unnecessarily expands the
9 action by improper conduct, including abuse of discovery
10 procedures.

11 B. If court costs or attorney fees are assessed
12 pursuant to Subsection A of this section, the court shall
13 allocate the assessment between the offending attorneys and
14 parties in a manner that the court determines most equitable.

15 C. No court costs or attorney fees shall be
16 assessed pursuant to this section for raising a claim or
17 defense if the party or attorney that raised the claim or
18 defense voluntarily withdraws or dismisses the claim or
19 defense within a reasonable time after the attorney or party
20 knew or should have known that it would not prevail.

21 D. Unless the party is licensed to practice law in
22 New Mexico, no party who is appearing without an attorney
23 shall be assessed attorney fees unless the court finds that
24 the party knew or should have known that the party's claim or
25 defense:

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- 1 (1) is without substantial justification;
- 2 (2) is raised for the purpose of delay or
- 3 harassment; or
- 4 (3) otherwise unnecessarily expands the
- 5 action by improper conduct, including abuse of discovery
- 6 procedures.

7 Section 4. PROCEDURE FOR DETERMINING COSTS AND ATTORNEY

8 FEES. --In determining whether to assess costs or attorney
9 fees, the court shall exercise its sound discretion, shall
10 specifically set forth the reasons for the assessment and
11 shall consider all relevant factors, including:

12 A. the extent to which an effort was made to
13 determine the validity of a claim or defense before it was
14 asserted;

15 B. the extent to which an effort was made after
16 the commencement of an action to reduce the number of claims
17 or defenses being asserted or to dismiss claims or defenses
18 that were not found to be valid;

19 C. the availability of facts to assist the party
20 to determine the validity of a claim or defense;

21 D. the relative financial position of the parties
22 involved;

23 E. whether the action was prosecuted or defended
24 in whole or in part in bad faith;

25 F. whether issues of fact, determinative of the

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1 validity of a party's claim or defense, were reasonably in
2 conflict;

3 G. the extent to which the party prevailed with
4 respect to the number of claims in controversy and the
5 judgment amount;

6 H. the extent to which a claim or defense was
7 asserted by an attorney or party in a good-faith attempt to
8 establish a new theory of law;

9 I. the amount or conditions of any offer of
10 judgment or settlement in relation to the amount or conditions
11 of the ultimate relief granted by the court;

12 J. the extent to which a reasonable effort was
13 made to determine prior to the time of filing of a claim that
14 all parties sued or joined were proper parties owing a legally
15 defined duty to the party asserting the claim; and

16 K. the extent of any effort made after the
17 commencement of an action to reduce the number of parties in
18 the action.

19 Section 5. USE OF ALIASES. --The actual name of each
20 party to a civil action shall be specified in all pleadings
21 and decisions filed in the action unless:

22 A. one of the parties is a minor, in which case an
23 alias may be substituted for the name of the minor; or

24 B. the court determines that there is a public
25 policy reason for keeping the name of a party confidential to

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1 avoid distress and embarrassment and issues a protective order
2 that allows the parties to know the name of the party but
3 prohibits them from disclosing the name publicly.

4 Section 6. STIPULATED COSTS AND FEES. --Nothing in the
5 Litigation Accountability Act limits the power of a court to
6 approve stipulations or agreements between the parties
7 agreeing to no award of attorney fees or court costs or
8 agreeing that attorney fees and court costs shall be assessed
9 in a manner different than the procedure specified in the
10 Litigation Accountability Act.

11 Section 7. APPLICABILITY TO OTHER LAWS. --The provisions
12 in the Litigation Accountability Act shall not apply to civil
13 actions brought under any other law specifically providing for
14 court costs and attorney fees.